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SUPREME COURT OF THE UNITED STATES.

No. 62.

JOHN E. HYDE & JOSEPH H. OGLESBY, A COMMERCIAL FIRM TRADING UNDER THE NAME AND STYLE OF HYDE & OGLESBY, PL'FFS IN ER.,

vs.

HENRY L. STONE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

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CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern District of Louisiana.

TRANSCRIPT.

Petition.—Filed May 1st, 1854. No. 2322.

To the honorable the judges of the circuit court of the United States, fifth circuit eastern district of Louisiana:

The petition of Henry L. Stone, a citizen of the State of Massachusetts, represents, that John E. Hyde and Joseph H. Oglesby, late commercial partners, and lately doing business under the name and style of Hyde & Oglesby in the city of New Orleans, both of whom are citizens of the State of Louisiana, and domiciliated within the jurisdiction of this court, are indebted to him, in salido, in the sum of fifteen hundred dollars, with interest thereon from the nineteenth day of March, 1850, till paid, together with five dollars on every hundred dollars thereof, as damages upon the non-payment of the same; for this, petitioner is the holder and owner of a certain foreign bill of exchange, dated New Orleans, January 2d, 1850, drawn by defendants under their partnership name of Hyde & Oglesby for the said sum of fifteen hundred dollars, payable to their own order, sixty days after sight, on P. Frothingham, a citizen of Boston, Massachusetts, and a citizen of California at this time. Said bill of exchange was endorsed by defendants to your petitioner, and was accepted by the said P. Frothingham. Petitioner further avers, that when said bill became due and payable, the same was presented to the said P. Frothingham for payment, who refused to pay the same; whereupon the same was protested according to law, and due notice thereof given to defendants, who thereby became liable to pay your petitioners the said bill of exchange and the damages above mentioned, together with the interest accruing upon the same. Petitioner annexes the bill of exchange and protest aforesaid to this petition, and makes it a part thereof. Petitioner further avers that no part of said bill has been paid, although requested. The premises considered, petitioner prays that the above-mentioned defendants be cited to answer this petition, and after due proceedings, they be condemned in salido to pay your petitioner the said sum of fifteen hundred dollars, with interest from the nineteenth day of March, 1850, till paid, together with five dollars on every hundred dollars specified in said bill, costs of protest, and costs of suit, and for all other and general relief.

(Signed,) COTTON & DORSEY,
Att'ys for Pl'ff.

Bill of exchange annexed to protest.

No. 142.

$1,500. NEW ORLEANS, *January* 2*d*, 1850.

Sixty days after sight of this second of exchange, first unpaid, pay to the order of ourselves fifteen hundred dollars, value received, which place to account W. Barton, as advised.

HYDE & OGLESBY.

To P. FROTHINGHAM, Esq.,
Boston.

(Endorsed:) Pay H. L. STONE.
HYDE & OGLESBY.
(Erased:) H. L. STONE,
By H. W. HEBERT, *Att'y.*
[Acceptance on face:] Jan. 15, 1850. PETER FROTHINGHAM.

Protest annexed to petition.

No. 142.

$1,500. NEW ORLEANS, *January* 2*d*, 1850.

Sixty days after sight of this second of exchange, first unpaid, pay to the order of ourselves fifteen hundred dollars, value received, which place to account W. Barton, as advised.

HYDE & OGLESBY.

To P. FROTHINGHAM, Esq.,
Boston.

Endorsed: Pay H. L. STONE.
HYDE & OGLESBY.
H. L. STONE,
By H. W. HERBERT, *Att'y.*
[Acceptance on face:] Jan. 15, 1850. PETER FROTHINGHAM.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, City of Boston, ss:

On this nineteenth day of March, in the year of our Lord one thousand eight hundred and fifty, I, Henry Clark, notary public, by legal authority admitted and sworn, and dwelling in the city of Boston, at the request of J. J. Loving, esq., cashier North Bank of Boston, went with the original bill of exchange, of which the foregoing is a true copy, to the counting-room, in this city, of Peter Frothingham, the acceptor, and presenting said bill to him, demanded payment thereof, the time therein limited and grace having elapsed, to which he answered that said bill would not be paid.

I sent notice of the non-payment thereof to the drawers and first endorsers, requiring payment of them, by mail to New Orleans.

Wherefore I, the said notary, at the request aforesaid, have pro-

tested, and by these presents do solemnly protest, against the drawers of said bill, and endorsers, acceptor, and all others concerned therein, for exchange, re-exchange, and all costs, charges, damages, and interest, suffered and sustained, or to be suffered and sustained, by reason or in consequence of the non-payment of said bill.

Thus done and protested, in Boston aforesaid, and my notarial seal affixed, the day and year last written.

(Signed,) HENRY CLARK, [SEAL.]
Notary Public.

Exception and answer.—Filed 19th May, 1854.

U. S. CIRCUIT COURT
For the Fifth Circuit and Eastern District of Louisiana.

H. L. STONE
vs.
HYDE & OGLESBY.

Now come the defendants and except to the right of the plaintiff to have and maintain his action against them, on the grounds following, viz:

1st. That the said bill of exchange sued on was bought or owned by the commercial firm of H. L. Stone & Co., which is located in New Orleans, and the members of which are citizens of the State of Louisiana, and is still the property of said firm, and not the individual property of the said H. L. Stone.

2d. That the said H. L. Stone is a citizen of Louisiana, and the said bill of exchange was a Louisiana contract, and governed by the laws of that State.

3d. That the said H. L. Stone was residing in Louisiana, and a citizen of that State, when defendants surrendered their property in insolvency in the 3d district court of New Orleans, to which proceedings the said Stone and Stone & Co. were parties. That subsequent thereto the said Stone instituted suit on the said bill of exchange against defendants in the 4th district court of New Orleans, and an exception filed by defendants, the same was sustained, and the said suit was transferred to the 3d district court of New Orleans, and made part of the aforesaid insolvent proceedings therein, by which the right of plaintiff to have and maintain his present action is barred, and the question has become res judicata.

4th. Because the court has no jurisdiction.

Wherefore defendants pray that the said suit be dismissed. But in case said exceptions should be overruled, and not otherwise, defendants plead a general denial of indebtedness and a special denial of the citizenship of the real owner of the said bill of exchange, and pray to be hence dismissed, with costs, &c.

(Signed) MOTT & FRASER,
Att'ys.

Minutes.—November term, A. D. 1855.

NEW ORLEANS, *Thursday, 22d November*, 1855.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

H. L. STONE
vs.
HYDE & OGLESBY. } No. 2322.

This cause was called for trial—W. Cornelius, esq., appearing for plaintiff. Defendants' counsel absent. Whereupon, after hearing evidence and argument on part of plaintiff, the cause was submitted to the court.

Minutes.—November term, A. D. 1855.

NEW ORLEANS, *Thursday, 29th November*, 1855.

Court met pursuant to adjournment. Present, Hon. T. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

H. L. STONE
vs.
HYDE & OGLESBY. } No. 2322.

On motion of Mott & Fraser, of counsel for def'ts, and on filing the affidavit of Hyde, Hyde and Oglesby, one of the def'ts, it is ordered that a subpœna duces tecum issue to John A. Roberts, commanding him to bring into court forthwith the commercial books of H. L. Stone & Co., of this city, for the year 1850.

H. L. STONE
vs.
HYDE & OGLESBY. } No. 2322.

This cause was taken up by consent of parties, and argued by W. Cornelius for plaintiff, and by Mr. Fraser for def'ts, and submitted to the court and taken under advisement.

Statement of facts.

U. S. circuit court, 5th circuit eastern dist. La.

H. L. STONE
vs.
HYDE & OGLESBY. } No. 2322.

1st. That the pl'ff sued defendants on this bill of exchange in

the 5th district court of New Orleans, on the first day of March, 1853; and on the 10th day of March, 1853, def't, Oglesby, filed an exception to the jurisdiction of said 5th dist. court, upon the ground that "he has made a surrender of his property to his creditors, in the third district court of New Orleans, which surrender has been excepted and all proceedings stayed against him, and that plaintiff is put upon his schedule as a creditor;" and on the 27th of May, 1853, the def't, Hyde, filed in the said 5th dist. court an exception, upon the same grounds as those filed by Oglesby, and each of the defendants, Hyde & Oglesby, prayed that the suit of plaintiff be transferred and cumulated with the insolvency proceedings in the third district court of New Orleans.

2d. On the trial of said exceptions, the 5th dist. court, on the 31 May, 1853, rendered the following judgment, to wit: "For the reasons this day filed, it is adjudged and decreed that the exceptions herein filed be maintained, and the costs paid out of the mass of property surrendered."

3d. The pl'ff, by his attorney, P. S. Warfield, esq'r, in his petition filed in the fifth district court of New Orleans, alleged that pl'ff, H. L. Stone, resided in New Orleans; and on the trial of the exceptions, in the 5th dist. court of New Orleans, it was proved by the testimony of the said attorney, P. S. Warfield, esq'r, that H. L. Stone was a member of the firm of H. L. Stone & Co., of New Orleans; that said firm had carried on business in New Orleans during the last eight years as wholesale grocers, and that the said firm was composed of H. L. Stone, who was absent from New Orleans during the summer months, and John A. Roberts, who was the resident partner.

4th. On the trial in this court it was proved that H. L. Stone had always been a citizen of Massachusetts, during the whole time of his connection as a partner in the house of H. L. Stone & Co., of New Orleans, and up to the present date, and that he never had been at any time a citizen of the State of Louisiana; that his family had resided in Massachusetts; that he had carried on a commercial establishment in Boston on his own account; that he had generally spent a portion of the winter months in New Orleans, and then returned to his business establishment and domicil in Massachusetts; and that the bill of exchange sued on was purchased by H. L. Stone, personally, of defendant in the city of New Orleans; that under the personal orders of H. L. Stone, the money for said purchase was paid to defendant by Mr. Roberts, of the house of H. L. Stone & Co., out of moneys which H. L. Stone had on deposit and to his individual credit in the house of H. L. Stone & Co., and the amount paid for the bill of exchange was at the time of purchase charged to the pl'ff, H. L. Stone, individually, and in his personal account on the books of H. L. Stone & Co.

5th. The bill of exchange sued on was drawn and endorsed by def't, and protested for non-payment at maturity.

6th. The notary who protested the bill at Boston, on the 19th March, 1850, made the following statement in his protest: "I sent notice of the non-payment thereof to the drawers and first endorsers, requiring payment of them by mail to New Orleans."

7th. Plaintiff performed no act to make himself a party to the insolvency proceedings in the 3d dist. court of New Orleans, and no notice of said proceedings had ever been served on the plaintiff.

8th. The defts., Hyde & Oglesby, through error in regard to who was the true legal holder and owner of the bill sued, did place the same on their schedule in insolvency, filed in the 3d dist. court, as a debt due to H. L. Stone & Co., of New Orleans, when in fact it was held and owned by H. L. Stone, of Massachusetts.

(Signed) W. CORNELIUS,
Att'y for H. L. Stone.
MOTT & FRAZER,
For deft.

Judgment.

Minutes.—November term, A. D. 1855.

NEW ORLEANS, *Saturday*, 1*st December*, 1855.

Court met pursuant to adjournment. Present, Hon. T. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

H. L. STONE
vs.
HYDE & OGLESBY. } No. 2322.

By reason of the law and the evidence, it is now ordered and adjudged that the plaintiff, H. L. Stone, do have and recover judgment against the defendants, John E. Hyde and Joseph H. Oglesby, in salido, for the sum of fifteen hundred dollars principal, and seventy-five dollars damages, with interest, at the rate of five per cent. per annum upon the said principal sum of fifteen hundred dollars, from the 19th day of March, 1850, until paid, and two dollars costs of protest and costs of suit.

Minutes.—November term, A. D. 1855.

NEW ORLEANS, *Wednesday*, 5*th December*, 1855.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

H. L. STONE
vs.
HYDE & OGLESBY. }

On motion of A. A. Fraser, of counsel for the defendant, it is

ordered that plaintiff show cause, on Saturday, the 15th inst., at 10 o'clock a. m., why a new trial should not be granted in this cause for the reasons this day filed.

Grounds for new trial.—Filed 5th Dec'r, 1855.

CIRCUIT COURT OF THE UNITED STATES,
Eastern District of Louisiana:

H. L. STONE
vs.
HYDE & OGLESBY. } No. 2322.

On motion of Mott & Fraser, of counsel for defts., it is ordered by the court that plaintiff show cause, on Saturday, the day of December, 1855, at 10 o'clock a. m., why the judgment rendered in this case should not be set aside and a new trial granted, upon the following grounds:

1st. The court erred in overruling the plea of res-judicata, set up by defts.—the judgment of the fifth district of New Orleans, having cumulated the case with the insolvent proceedings of defts. in the 3d district court, was conclusive and binding on the parties.

2d. That the pl'ff, in his suit in the fifth district court of New Orleans vs. these defts., declared himself a resident of New Orleans, (his attorney, Warfield, proves the fact,) and sought his remedy in the State court; and the judgment of that court, cumulating the ease with the proceedings in insolvency, was and is binding upon him, he never having appealed from the same.

3d. There is no legal evidence of notice of the protest of the bill having been given to defts., and the court was mistaken in stating that the testimony showed that defts. had put pl'f on their schedule in their surrender to their creditors.

4th. The judgment is contrary to law and evidence, and should be set aside.

Minutes.—November term, A. D. 1855.

NEW ORLEANS, *Saturday, 15th December*, 1855.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

H. L. STONE
vs.
HYDE & OGLESBY. } 2322.

The application herein made by defendants for a new trial came on to be heard; and after argument of counsel, and on consideration thereof, it was ordered that the said rule be dismissed and the new trial refused.

Opinion of the court.—Delivered 15th Dec'r, 1855.

U. S. CIRCUIT COURT:

H. L. STONE
vs.
HYDE & OGLESBY.

The plaintiff sues, as a citizen of the State of Massachusetts, to recover the amount of a draft of $1,500, drawn by defendants on P. Frothingham, of Boston, and by him accepted. At maturity the draft was duly protested for non-payment, after a regular demand of payment made upon the acceptor. It is in evidence that the plaintiff was a member of the commercial firm of H. L. Stone & Co., of this city, at the time the draft was drawn, but has never been a citizen of Louisiana. His residence, except during a few months during the winter, has been in Boston, Massachusetts, where his family reside, and where alone he has claimed and exercised the rights of citizenship.

I do not consider these rights forfeited in the present case by the institution of the suit against the defendants for the recovery of this draft before the 5th district court of this State, of which the record has been given in evidence. In sustaining the exception filed by the defendants, that court properly decided that all proceedings in the insolvency should be conducted before the 3d district court, where those proceedings were originally commenced. But such a decision could not prevent the plaintiff from instituting suit before this tribunal, as a citizen of Massachusetts. In deciding that the plaintiff could not proceed with his action in any other State court than the one where the defendants had made their surrender, the 5th district court did not give such a judgment as, in any sense, could operate as res judicata upon the merits of this action. There is no evidence in the record that the plaintiff ever made himself a party to the insolvent proceedings of the State court; and after he was refused permission to proceed in the 5th district court, he had a perfect right to institute his suit before this tribunal, where the insolvent proceedings before the State court could have no force or effect in defeating his constitutional right to assert his remedy against the defendants as citizens of Louisiana.

The counsel for the defendants has further contended that there was no notice given to his clients of the protest of the draft sued on. The notary declared in his certificate that he gave notice to the drawers in New Orleans; but whether this certificate of the notary is sufficient under the law of Louisiana, I have not thought it necessary in the present case to decide.

It is in evidence that when the defendants filed their bilan in the State court, the plaintiff was solemnly under oath recognized by them as a creditor for the amount of the draft in which this suit is

instituted. If, in point of fact, no notice was ever received by the defendants, which is hardly possible, after this solemn admission of their liability, they had a perfect right to waive the want of notice and confirm their original obligation; and this they have done, in a form and manner which can admit of no doubt.

It is therefore ordered that judgment be given for the amount of the draft, with legal interest from the date of protest, five per cent., damages, and the costs of suit.

Final judgment.

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern District of Louisiana.

November term, A. D. 1855.

NEW ORLEANS,
Saturday, 1st December, 1855.

Court met, pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

H. L. STONE
vs.
HYDE & OGLESBY. } 2322.

By reason of the law and evidence, it is now ordered and adjudged that the plaintiff, H. L. Stone, do have and recover judgment against the defendants, John E. Hyde and Joseph H. Oglesby, in solido, for the sum of fifteen hundred dollars principal, and seventy-five dollars damages, with interest at the rate of five per cent. per annum upon the said principal sum of fifteen hundred dollars, from the 19th of March, 1850, until paid, and two dollars costs of protest and costs of suit.

Judgment rendered 1st December, 1855. Judgment signed 17th December, 1855.

(Signed) THEO. H. McCALEB,
U. S. Judge.

Petition for writ of error.

Filed 18th Dec'r, 1855.

To the honorable the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The petition of John E. Hyde and Joseph H. Oglesby, respectfully shows that they are informed and believe that there is error

in the final judgment rendered in the case of H. L. Stone vs. petitioners, by which your petitioners are aggrieved.

Wherefore petitioners pray that they be allowed a writ of error to the Supreme Court of the United States, returnable on the 1st Monday in December, 1856, the next term of said court, and that the same operate as a supersedeas, upon their *given* in such bond as shall be ordered by the court, and for general relief.

(Signed) MOTT & FRASER,
For petitioners.

Minutes.—November term, A. D. 1855.

NEW ORLEANS,
Tuesday, 18th December, 1855.

Court met pursuant to adjournment. Present, Hon. T. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

H. L. STONE
vs.
HYDE & OGLESBY. } 2322.

On motion of Messrs. Mott & Fraser, of counsel for defendants, and on presenting and filing their petition representing that they are aggrieved by the final judgment herein rendered against them, and praying a writ of error therefrom to the next term of the Supreme Court of the United States, and that the same may operate as a supersedeas, it is ordered that a writ of error be allowed as prayed for on said defendants giving bond, conditioned according to law, in the penal sum of thirty-one hundred dollars, with good and solvent security thereon.

Bond for writ of error.—Filed 24th December, A. D. 1855.

Know all men by these presents, that we, Hyde & Oglesby, principal, and J. T. Delmas, as surety, are held and firmly bound unto H. L. Stone, in the full and just sum of thirty-one hundred dollars, to be paid to the said H. L. Stone, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana at the city of New Orleans, in a suit depending in said circuit court, wherein H. L. Stone is plaintiff and Hyde & Oglesby

are defendants, judgment was rendered against the said Hyde & Oglesby, defendants; and the said Hyde & Oglesby having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said H. L. Stone, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Hyde & Oglesby shall prosecute their writ to effect, and shall pay such judgment as to the said Supreme Court shall render, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed,) J. H. OGLESBY, [SEAL.]
" JOHN E. HYDE, [SEAL.]
" J. T. DELMAS, [SEAL.]

Sealed and delivered in the presence of—

J. T. Delmas, being sworn, says that, after the payment of all his debts, he is worth the sum of thirty-five hundred dollars.

(Signed,) R. RICHARDSON, [SEAL.]
3d J. P.

UNITED STATES OF AMERICA,
Circuit Court of the United States.

Fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 16 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had in the case of H. L. Stone vs. Hyde & Oglesby No. 2322 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New [L. S.] Orleans, this 24th day of November, A. D. 1856.

J. W. GURLEY,
Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition

of the judgment of a plea which is in the said circuit court, before you, or one of you, between H. L. Stone and Hyde & Oglesby, a commercial firm composed of J. H. Oglesby and John E. Hyde, a manifest error hath happened, to the great damage of the said Hyde & Oglesby, as by their complaint appears;

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this twenty-fourth of December, in the year of our Lord one thousand eight hundred and fifty-five.

J. W. GURLEY,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

THE UNITED STATES OF AMERICA:

The President of the United States to H. L. Stone, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Hyde & Oglesby, a commercial firm composed of J. H. Oglesby and John E. Hyde, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and fifty-five.

THEO. H. McCALEB,
U. S. Judge.

[Endorsed:] United States circuit court, No. 2322. H. L. Stone vs. Hyde & Oglesby. Citation in error.

Marshal's return.

Received December 24th, '55, and on the 26th day of Dece'ber, 1855, served copy of the within citation in error on Messrs. H. L. Stone, by handing the same to Wm. Cornilius, att'y of record, in person, in the city of New Orleans, and returned same day.

E. MARY, *D'y M.*